

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

ESSEX P.B. & R. CORP.,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 4:08CV01705 ERW
)	
XCAPER INDUSTRIES, LLC,)	
)	
Defendant.)	

MEMORANDUM AND ORDER

This matter comes before the Court on Plaintiff Essex P.B. & R. Corp.'s Voluntary Motion to Dismiss, or in the Alternative, Motion to Amend the Court's Case Management Order [doc. #17]; Plaintiff Essex P. B. & R. Corp.'s Motion to Stay Briefing on Xcaper's Motion for Summary Judgment in Light of the Court's Ruling upon Essex's Motion to Dismiss [doc. #23]; and Motion to Strike Plaintiff Essex P. B. & R. Corp.'s Reply in Support of its Voluntary Motion to Dismiss, or in the Alternative, Motion to Amend the Court's Case Management Order [doc. #26]. The Court held a hearing on the above listed matters on Wednesday, June 17, 2009. Both Parties were represented by counsel at the hearing.

During the course of the hearing, counsel for Defendant mentioned the use of a covenant not to sue in a similar case that was heard by Judge Charles A. Shaw, of the United States District Court for the Eastern District of Missouri. *See Furminator, Inc. v. Ontel Prods. Corp.*, 246 F.R.D. 579 (E.D. Mo. 2007). In response, counsel for Plaintiff expressed some willingness to consider crafting a covenant not to sue in this case. The Court believes that it would be beneficial to give the Parties some additional time to discuss the possibility of entering into a covenant not

to sue. Thus, the Court invites a discussion on whether the Parties have an interest in engaging in a discussion and ultimately executing a covenant not to sue provision that would protect the interests of the respective parties. In the event that the Parties are willing to enter into a covenant not to sue agreement, the Court will then hold a hearing to determine whether counsel fees should be awarded, and if so, in what amount. In the absence of accord pursuant to the Court's inquiry, the Court will proceed with the pending Motions.

Accordingly,

IT IS HEREBY ORDERED that the Parties shall notify the Court by Friday, July 10, 2009, of the status of the dispute and their willingness to enter a covenant not to sue agreement.

Dated this 19th Day of June, 2009.

A handwritten signature in black ink, appearing to read "E. Richard Webber", is written over a horizontal line.

E. RICHARD WEBBER
UNITED STATES DISTRICT JUDGE